

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONDEL LEWIS STRICKLAND,

Defendant-Appellant.

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UNPUBLISHED

June 27, 2006

No. 260480

Macomb Circuit Court

LC No. 2002-002997-FH

Before: Bandstra, P.J., and Saad and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver 50 or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii), and sentenced to ten to twenty years' imprisonment. He appeals as of right. We affirm.

Defendant's conviction arises from the discovery of cocaine during the execution of a search warrant at a Ramada Inn hotel room on September 10, 2002. Before obtaining the search warrant, Clinton Township Police Detective Mark Sylvester, while conducting surveillance at the hotel, identified defendant and another man as individuals using the hotel room. He used a confidential informant during the week of September 2, 2002, to make two controlled buys of cocaine at the hotel room. During the September 10, 2002 search of the room, officers found identification belonging to defendant, Robert Wilson, and Sara Lososcki. Twelve small bags containing a total of 53.94 grams of cocaine were seized from a nightstand, along with over \$2,000 in cash, a wallet containing Wilson's identification, some packaging materials, and a digital scale. Wilson entered into a plea agreement that required him to testify at defendant's trial, at which the prosecution pursued its theory that defendant and Wilson jointly possessed the cocaine. Wilson testified that he and defendant had discussed selling drugs together once Wilson was released from prison. Defendant rented a hotel room from which to sell cocaine before Wilson joined him during the week of September 2, 2002. Defendant acquired the cocaine, but both sold it.

Defendant first claims he was deprived of due process by the admission of his codefendant's statements regarding uncharged crimes. However, defendant has not identified or addressed any statements by his codefendant that he believes were improperly admitted. A party may not leave it to this Court to find a factual basis to support or reject his position. *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990). Assuming defendant's argument is directed at Wilson's testimony that he previously discussed a plan to sell drugs with defendant,

as argued by the prosecution on appeal, defendant has not established an evidentiary error. A trial court's evidentiary decisions are generally reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). But decisions regarding admissibility that involve preliminary questions of law are reviewed de novo. *Id.*

For other-acts evidence to be admissible under MRE 404(b), the prosecution must offer a proper purpose for the evidence, the evidence must be relevant, and its probative value may not be substantially outweighed by the danger of unfair prejudice under MRE 403. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004). Here, the trial court allowed the evidence to show the relationship between defendant and Wilson and, in particular, whether they were involved in a common enterprise of selling drugs. The trial court rejected defense counsel's claim that the fact drugs were involved would cause unfair prejudice.

Evidence is logically relevant if charged and uncharged acts are part of a single continuing conception or plan. *Id.* at 510. Because Wilson's testimony regarding his discussion with defendant was probative regarding how he and defendant formed a common enterprise to sell cocaine, the evidence was logically relevant. Without the evidence, the factfinder would have been left with a chronological and conceptual void regarding the events surrounding the cocaine in the hotel room. *People v VanderVliet*, 444 Mich 52, 81; 508 NW2d 114 (1993), mod 444 Mich 1205 (1994). Indeed, it is arguable that the evidence of Wilson's discussion with defendant did not even implicate MRE 404(b), because it did not involve an intermediate character inference. Evidence may be relevant and admissible independent of MRE 404(b), if it does not involve an intermediate character-to-conduct inference. *VanderVliet*, *supra* at 64.

The evidence of Wilson's earlier discussions with defendant was relevant, and defendant has failed to demonstrate any basis for holding that the trial court abused its discretion by allowing it. To the extent defendant suggests in his first issue that other evidence was improperly admitted, we decline to address defendant's argument because it is insufficiently briefed, and the statement of the issue presented is limited to the codefendant's statements. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000).

Next, defendant argues his due process rights were violated when Wilson testified that he pleaded guilty to the crime with which defendant was also charged. We disagree.

Defendant cites testimony elicited by the prosecutor on direct examination and defense counsel on cross-examination as the factual predicate of his argument. Defendant's counsel informed the trial court at the beginning of trial, "I fully intend to indicate that Mr. Wilson is taking a substantial deal here to testify," and then acted on his stated intent by cross-examining Wilson regarding his guilty plea to support the defense theory that Wilson was not credible. By affirmatively approving the admission of evidence regarding Wilson's guilty plea, defense counsel waived any error. See *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000), and *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995) ("[d]efendant may not assign error on appeal to something that his own counsel deemed proper at trial").

Even if we were to treat this issue as forfeited rather than waived, reversal is not warranted because defendant has failed to establish that evidence of Wilson's guilty plea was plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). It was Wilson's testimony admitting participation in the crime, rather than his plea, that

prejudiced defendant, albeit not in an unlawful sense. *People v Manning*, 434 Mich 1, 10; 450 NW2d 534 (1990). Because there is no indication in the record that defense counsel intended to forego use of the plea, and the trial court gave a cautionary instruction regarding the use of the plea and how the jury was to evaluate accomplice testimony, Wilson's testimony regarding his guilty plea does not require reversal. *Id.* at 10-11.

Finally, defendant claims he was deprived of his due process right to be free from an unlawful search and seizure by the trial court's denial of his motion to suppress the search warrant. He asserts that the search warrant affidavit contained material errors or omissions that should have prevented the warrant from being issued. We disagree.

A magistrate may only issue a search warrant if it is supported by probable cause. *People v Ulman*, 244 Mich App 500, 509; 625 NW2d 429 (2001). If the search warrant affidavit is premised on information provided by an unnamed informant, probable cause generally requires "(1) some of the underlying circumstances evidencing the informant's basis of knowledge and (2) facts establishing either the veracity or the reliability of the information." *People v Hawkins*, 468 Mich 488, 502; 668 NW2d 602 (2003). Michigan's statutory rule, MCL 780.653(b), is derived from this general test, although a statutory error does not alone require the suppression of evidence. *Id.* at 501-502, 510. MCL 780.653(b) provides that if the person is unnamed, there must be "affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable." If there is a substantial basis to conclude there is a fair probability that the items sought will be found in the stated place, then the search warrant should be upheld. *People v Head*, 211 Mich App 205, 208; 535 NW2d 563 (1995), citing *People v Russo*, 439 Mich 584; 604; 487 NW2d 698 (1992).

A reviewing court reads the affidavit in a common sense and realistic manner to determine whether a reasonably cautious person could have concluded there was a substantial basis for the finding of probable cause. *Head, supra* at 208-209. The information provided by Detective Sylvester in the search warrant affidavit regarding his use of a confidential informant to conduct two controlled buys was sufficient to permit the issuance of the search warrant. See *Head, supra* at 209 (two controlled buys were sufficient to establish probable cause for a search warrant). The success of the two controlled buys supports the reliability of the confidential informant's information, and the information in the affidavit was not stale because both controlled buys occurred during the week of September 2, 2002. *Id.* Further, the affidavit indicated that Detective Sylvester verified other information provided by the confidential informant regarding defendant's and Wilson's presence together at the hotel. Detective Sylvester averred that he conducted surveillance at the hotel and used previous booking photos to verify the identity of defendant and Wilson at the hotel.

Whether there was a material error or omission in the affidavit is a distinct question that defendant was afforded an opportunity to pursue when the trial court conducted the evidentiary hearing regarding the search warrant. Defendant had the burden of proving, by a preponderance of the evidence, that Detective Sylvester knowingly and intentionally, or with reckless disregard for the truth, provided false material in the affidavit that was necessary to a finding of probable cause. *Ulman, supra* at 510, citing *Franks v Delaware*, 438 US 154, 171-172; 98 S Ct 2674; 57 L Ed 2d 667 (1978). The same standard applies to material omissions. *Id.* Defendant had the burden of showing that Detective Sylvester intentionally omitted information, and the omissions

were necessary to a finding of probable cause. We review the trial court's findings of fact at a suppression hearing for clear error. *Head, supra* at 209.

The sole witness at the evidentiary hearing was Detective Sylvester. We are not persuaded that defendant elicited any testimony demonstrating a material error or omission in the affidavit that was intentional and necessary to a finding of probable cause. Although Detective Sylvester testified that he had not worked with the confidential informant in the past, this information was not material to the magistrate's finding of probable cause. In sum, a common sense and realistic reading of the search warrant affidavit discloses that it provided a substantial basis for a finding of probable cause. *Head, supra* at 208-209. Therefore, we uphold the trial court's denial of defendant's motion to suppress.

Affirmed.

/s/ Richard A. Bandstra

/s/ Henry William Saad

/s/ Donald S. Owens